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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,278	07/11/2001	Philip M. Walker	10012790-1	9299

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EXAMINER
TRAN, TONGOC

ART UNIT	PAPER NUMBER
2134	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/903,278	WALKER ET AL.
	Examiner	Art Unit	
	Tongoc Tran	2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 November 2005*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This office action is in response to Applicant's amendment filed on November 10,

2005. Claims 1-26 are pending.

Response to Arguments

2.   Applicant's arguments filed November 10, 2005 have been fully considered but

they are not persuasive.

        Applicant contends that there is no motivation to combine the cited prior art

Barritz and Krishnaswami. Applicant states that the reason there is *"no motivation or*

suggestion to combine the purported teaching of Krishnaswami with Barritz at least

because the information desired by the Barritz system is actual usage *of a program*

module of Barritz ("mak[ing] it possible for a company to cancel maintenance or rental

on unused or under-used products" (Barritz, column 2, lines 65-67). Accordingly while

Barritz appears to be directed toward monitoring and reporting actual usage of a

program module. Applicants' invention is instead directed toward determining whether

a target computer system has been altered. Accordingly, there is no motivation or

suggestion to modify the Barritz reference as suggested by the Examiner other than

Applicants' disclosure, which is improper". Applicant appears to argue the difference

between Barritz and Applicant's invention but does not address why there is no

motivation to combine the teaching of Barritz and Krishnaswami.

        A target as Applicant clarify from the Specification page 3 defines as client

systems, that may be a computers, servers and other equipment leased to customers

on a usage-based biling model. Barritz teaches monitoring actual usage of particular

software products installed on a computer system. Barritz states in col. 1, lines 55-65,

that there is concern that software product may be used by more users than the number

of which they are licensed or by unauthorized users. Therefore, at least one of the

reasons for monitoring the actual usage of the products installed in the system is to

uncover unauthorized usage (col. 2, lines 65-67). Barritz describes the monitor program

records pertinent information in a recorded information log when certain event occurs

(col. 6, lines 32-35). Barritz further discloses that the monitoring program can also be

used to ensure compliance with licenses, both in terms of whether a given computer is

licensed to use a given software product and whether the licensed number of users on a

given system computer has been exceed...In a preferred embodiment monitoring

program checks the list whenever an event occurs which would require authorization,

e.g. program execution (col. 10, lines 23-43). Therefore, in both instances, checking

recorded information against what is stored in order to verify or performs authorization is

necessary. Since Barritz does not provide detail disclosure of the how the monitored

information is check and verify, it would have been obvious to one of ordinary skill in the

art at the time the invention was made to look to Krishnaswami's verification technique

to query the database for stored information to determine whether the inquiring file is

legitimate. In light of the interpretation of this teaching in Barritz and Krishnaswami.

Examiner asserts that the rejection of Barritz in view of Krishnaswami is proper.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 10-14, 19-23, 25 and 26 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Barritz (U.S. Patent No. 5,499,340) in view of Krishnaswami et

al. (U.S. Patent No. 6,618,735, hereinafter Krishnaswami).

In respect to claim 1, Barritz discloses a system comprising:

a target; a probe operable to execute in the target and collect a predetermined set of

data associated with the target; and a monitor operable to receive the collected

predetermined set of data (e.g. col. 8, line 65-col. 9, line 8, col. 10, lines 1-22 and line

65-col. 11, line 24). Barritz does not explicitly disclose comparing said data with

expected data values to determine whether the target has been altered. However,

Krishnaswami discloses comparing information with protected information stored in the

database to verify whether information has been altered (Krishnaswami, col. 7, lines 9-

25). Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to implement the teaching of initiating a probe to collect data at

a target system to uncover unauthorized usage of product taught by Barritz with the

teaching integrity file checking taught by Krishnaswami in order to ensure information

has not been altered (Krishnaswami, col. 7, lines 21-25).

In respect to claim 2, Barritz and Krishnaswami disclose the system, as set forth in claim 1, wherein the probe is resident in the target (Barritz, e.g. col. 10, lines 1-17).

In respect to claim 3, Barritz and Krishnaswami disclose the system, as set forth in claim 1, wherein the monitor is operable to send the probe to the target for execution (Barritz, e.g. col. 8, line 65-col. 9, line 8 and col. 10, lines 1-22).

In respect to claim 4, Barritz and Krishnaswami disclose the system, as set forth in claim 1, wherein the probe repeatedly executes and the predetermined set of data varies for each execution of the probe (Barritz, e.g. col. 9, lines 28-46 and col. 10, lines 18-22).

In respect to claim 5, Barritz discloses the system, as set forth in claim 1, wherein the predetermined set of data includes system attributes and system usage data (Barritz, e.g. col. 10, lines 1-22).

In respect to claims 10-14, the claim limitations are substantially similar to claims 1-5. Therefore, claims 10-14 are rejected based on the similar rationale.

In respect to claims 19-23 and 26, the claim limitations are substantially similar to claims 1-5. Therefore, claims 19-23 and 26 are rejected based on the similar rationale.

In respect to claim 25, Barritz and Krishnaswami disclose the method, as set forth in claim 23, further comprising generating billing data based on the system usage data in response to the system attribute data being verified (Barritz, e.g. col. 1, lines 35-45).

4.   Claims 6-9, 15-18 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz (U.S. Patent No. 5,499,340) in view of Krishnaswami (U.S.

Patent No. 6,618,735) and further in view of Bruce Schneier ("Applied Cryptography,

Second Edition, Protocols, Algorithms and Source Code in C", 1996, pages 30-31, 41-

44 and 48-50).

In respect to claims 6-9, Barritz and Krishnaswami disclose the system, as set

forth in claim 1. Barritz does not disclose wherein the probe is operable to calculate a

signature value of at least a portion of an execution image of the probe; to compare the

calculated signature value to an expected signature value; to determine a signature

value of a random subset of an execution image of the probe; to generate an encryption

key from the signature value for encrypting the collected predetermined set of data.

However, Schneier discloses using digital signature with encryption to authenticate the

integrity of data transmitted over the network (Schneier, e.g. pages 30-31, 41-44 and

48-50). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to incorporate the teaching of Barritz's monitoring computer usage

over the network with Schneier's teaching of digital signature to authenticate the data

received to ensure the integrity of the data transmitted over the network.

In respect to claims 15-17, the claim limitation is similar to claims 2-4. Therefore,

claims 15-17 are rejected based on the similar rationale.

In respect to claim 18, Barritz and Krishnaswami disclose the method, as set

forth in claim 17, further comprising: sending the data to a monitor, the data including

system attribute data and system usage data; verifying the system attribute data; and

generating billing data based on the system usage data in response to the system

attribute data being verified (e.g. col. 1, lines 35-45, col. 8, line 65-col. 9, line 8, col. 10,

lines 1-22 and line 65-col. 11, line 24). Barritz does not disclose sending an encrypted

data to a monitor and decrypting the encrypted data using a decryption key. However,

Schneier discloses encrypting and decrypting data using public key system (Schneier,

e.g. pages 20-31, 41-44 and 48-55). It would have been obvious to one of ordinary skill

in the art at the time the invention was made to incorporate the teaching of public key

encryption system taught by Schneier with Barritz's monitoring of computer usage to

protect transmitted data from being tampered.

In respect to claim 24, the claim limitation is similar to claims 18. Therefore,

claim 24 is rejected based on the similar rationale.

Conclusion

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tongoc Tran whose telephone number is (571) 272-3843. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached on (571) 272-3838. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner: Tongoc Tran
Art Unit: 2134

February 6, 2006
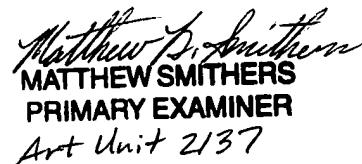
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